IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2791 OF 2005

Mrs. Majorie Passanah & Ors. ... Petitioner

Vs.

Mrs. Mumtaz I. Shaikh ... Respondent

Mr. Denzil D'Mellow for the petitioners.

Mr. Kana with Mr. R.S. Patil for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH APRIL, 2005.

P.C.:-

1. The defendants-tenants have challenged in this petition order dated 15/4/2005 passed by the Small Causes Court at Bombay in Interim Notice No.1248 of 2005 in R.A.E. Suit No.676/1273 of 1998.

2. The defendants had taken out this Interim Notice praying that the documents produced along with the said notice be taken on record and the same may be marked as exhibits. It is the case of the defendants that these documents are material for the purpose of determining the issues as the same establish that the plaintiff and her husband were residing at and are in possession of flat bearing House No.2/11, Karani Niwas, as on 8/1/1995 and that the said documents further establish that the number of the said flat, which was owned and occupied by the plaintiff defer from the number given by the plaintiff's witness while recording the evidence.

3. It is pertinent to note that this notice is taken out on 8/4/2005 when the defendants' arguments were in progress and after the recording of evidence of both the parties was completed on 1/3/2005. It is noted by the trial court that the argument of advocate for the defendants was heard firstly on 23/3/2005 and, thereafter, on 1/4/2005. I am informed that, in fact, the matter is posted for further arguments. Therefore, the learned trial court cannot be faulted for rejecting the belated application. It is the case of the defendants that due to oversight the defendants have not cross-examined the plaintiff's witness in relation to the Election Commission of India Identity Cards and, therefore, the same could be allowed to be taken on record and marked as exhibits as the plaintiff did rely on election cards in the schedule annexed to her affidavit of documents and, hence, the plaintiff cannot deny the existence of the said documents. It is admitted that the defendants were in possession of the xerox copies of the said documents. At the appropriate time, they did not cross-examine the plaintiff's witness. In the circumstances, when the evidence is recorded and the case is at the stage of argument, such an application cannot be allowed. No interference is necessary with the impugned order. Petition is dismissed.

(SMT. RANJANA DESAI, J.)